IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13089 of 2003

to

SPECIAL CIVIL APPLICATIONNo 13094 of 2003

with

SPECIAL CIVIL APPLICATION No 11791 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TATA CHEMICALS LTD.

Versus

RATILAL RAGHAVJI

Appearance:

1. Special Civil Application No. 13089 of 2003
   M/S TRIVEDI & GUPTA for Petitioner No. 1-2
   RULE SERVED for Respondent No. 1
2. Special Civil Application No. 11791 of 2003
   M/S TRIVEDI & GUPTA for Petitioner No. 1
   MR RAJESH P MANKAD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 22/09/2004

ORAL JUDGEMENT

By these petitions, the petitioner-Messrs Tata Chemicals Limited and its Manager have challenged the orders passed by the controlling authority under the Payment Gratuity Act, 1972 (hereinafter referred to as "the Act") in Gratuity Applications No.73 of 2001, 74 of 2001, 75 of 2001, 65 of 2001, 76 of 2001, 88 of 2001 & 64 of 2001 respectively and the orders passed by the appellate authority under the Act in Appeals No.103 of 2002 to 109 of 2002.

2. Mr.Thaker, the learned advocate appearing for Messrs Trivedi & Gupta submitted that the respondent workmen in Special Civil Applications No.11791 of 2003, 13089 of 2003, 13092 of 2003 and 13094 of 2003, retired between October to December 1999 by accepting Voluntary Retirement Scheme (VRS) while respondent workmen in Special Civil Applications No.13090 of 2003, 13091 of 2003 and 13093 of 2003 retired on reaching the age of superannuation between September to December 1999. He submitted that on acceptance of VRS and/ or on reaching the age of superannuation all these respondents were paid their retirement dues, including 'gratuity' as was payable under the rules. The learned advocate submitted that the controversy involved in these petitions is whether benefits flowing from settlement dated 13.11.2000, entered into between the Union on one hand and the petitioner company on the other on 13.11.2000 will be available to these respondent workmen or not. It is provided in the settlement itself that, 'the company will be paying a fixed lump sum amount per month mentioned in the table, to all the employees, on pro-rata basis of attendance'. It is also provided that, 'effective from 01.04.2000 the said amount will stand merged in the basic wage and new grades will be formed'. These new grades are also provided in the settlement itself. This clause of settlement is in response to demand no.1, "to amend the wage scales". Besides this, the settlement also provides for, "stand alone lump sum amount". This was agreed to be paid, 'with a view to motivate the workers to admit for benchmark of the company's operations as well as for skill development for self, which could also benefit the company as well as in

further appreciation of wholehearted cooperation extended by the union and the workers, in restructuring all the workforce at present and during the time to come'. This amount is paid 'one time only' as 'stand alone, lump sum'.

3. The learned advocate for the petitioner submitted that the amounts payable under the settlement dated 13.11.2000, were not to be paid to the present respondents but then later on it was agreed to be paid to the present respondents -- the persons who retired either accepting VRS or on reaching the age of superannuation, during the period in which VRS was in operation. That being so, the settlement as a whole is to be accepted by them. In the settlement it is specifically provided that,

> "The lump sum amount mentioned above will not attract any other benefits like provident fund, bonus, gratuity, OT, etc. .. .."

Having received the benefits under the settlement the respondents could not have given a go by to the aforesaid clause and could not have approached the controlling authority under the Payment of Gratuity Act. It is not in dispute that the company has paid the amount, payable under the first clause-- ' 'payment of lump sum amount' and also under 'stand alone lump sum amount' to the present respondents.

4. The respondents after having received the aforesaid benefits approached the controlling authority under the Act contending that the amount which is paid to them as lump sum amount is in the nature of wages and hence it is to be taken into consideration for calculation of gratuity determined on the basis of 'wages last drawn'. The controlling authority upheld the contention of the respondents and directed the company to pay the difference of gratuity amount which ranges between Rs.8000/-, to Rs.14000/-, to individual workman and the total comes to Rs.70,512/-, in this group of petitions.

5. Learned advocate Shri Thakar for the company strenuously contended that the controlling authority has committed error in passing the orders under challenge and the appellate authority has also erred in confirming the same. He submitted that firstly the respondents who had retired on accepting VRS or on reaching the age of superannuation were not initially out of the purview of the settlement. In fact the benefits under the

settlement were extended to them only as a gesture of good will and therefore, they ought not have raised any such dispute. Besides, the settlement once accepted was applicable as a whole and there it was agreed that the 'lump sum amount' will not attract any other benefits like provident fund, bonus, gratuity, OT, etc. He next submitted that the controlling authority under the Act has erred in holding that the 'lump sum amount' is to be added to the wages for arriving at the figure of 'wages last drawn'. He submitted that the amount paid was an ex gratia payment, which was not required to be added to the wages and 'last drawn wages' were not required to be calculated on that basis. The learned advocate relied upon two decisions, namely, (i) in the matter of E.I.D. Parry (India) Ltd. Vs. Regional Commissioner, EPF, Tamilnadu and another, reported in 1984-I LLJ 300, and (ii) decision of this Court in the matter of Associated Cement Co. Ltd. Vs. R.M. Gandhi, Regional Provident Fund Commissioner, Gujarat & others, reported in 1991 (2) GLR 1286.

6. This Court having gone through the record of the case is of the opinion that the controlling authority under the Act and the appellate authority have not committed any error. The decisions cited by the learned advocate has no application to the facts of the present case. Besides, the amount involved in each of these petitions and the total amount in this group of petitions does not warrant this Court to entertain these petitions.

7. At this juncture, the learned advocate for the petitioner company submitted that dismissal of the petitions may open the pandora's box for the petitioner company as other employees drawing inspiration from the result of these petitions may file similar applications even belatedly. The apprehension of the company is not well placed. As and when such applications are filed, the same will be dealt with on their own merits. Only because some other applications may be filed, this Court is not inclined to entertain these petitions. Looking to the amount involved in these petitions, the same are not warranted to be entertained and are dismissed. Rule is discharged. Interim relief is vacated. No order as to costs.

8. Mr.Mankad, the learned advocate for the respondent-workmen submitted that the amount payable under the impugned order is deposited before the appellate authority. He, therefore, requested that the appellate authority be directed to pay the same. Now that these petitions are dismissed, the appellate

authority under the Payment of Gratuity Act is directed to make payment within three weeks from the date of receipt of a copy of this judgement.

(Ravi R. Tripathi, J.)

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